

STAFF REPORT

Agenda Item No.:	7
Work Plan:	Private Forests Work Plan
Topic:	Water Quality Protection
Presentation Title:	Update and timeline for Riparian Rule Analysis
Date of Presentation:	November 5, 2014
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SUMMARY

This agenda item presents work completed since the September 2014 Board of Forestry (Board) meeting on the riparian rule analysis. Based on Board direction (Attachment1), the department met with the Regional Forest Practice Committees and stakeholders to discuss the geographic extent of the rule analysis, the extent of stream reaches to be included, and elements of complete and effective riparian prescriptions. This agenda item provides a summary of those discussions. The department also developed an adjusted timeline for the rule analysis process.

CONTEXT

The Board of Forestry's (Board) 2011 *Forestry Program for Oregon* supports an effective, science-based, and adaptive Oregon Forest Practices Act (FPA) as a cornerstone of forest resource protection on private lands in Oregon (Objective A.2). The discussion of Goal A recognizes that the FPA includes a set of best management practices designed to ensure that forest operations would meet state water quality standards adopted under the federal Clean Water Act. The Board's guiding principles and philosophies includes a commitment to continuous learning, evaluating and appropriately adjusting forest management policies and programs based upon ongoing monitoring, assessment, and research (Value Statement 11).

The overall goal of the water protection rules is to provide resource protection during operations adjacent to, and within, streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met. This rule analysis constitutes another step in the Board's adaptive management process of ensuring an effective and science-based FPA by considering regulatory and non-regulatory routes to meet water quality standards. The rule analysis process (ORS 527.714) requires that the Board determine that the proposed rule reflects available scientific information and appropriate factors have been considered. The analysis will seek to minimize the regulatory burden on forestland owners and operators, keep working forests working, and recognize the diverse forest management objectives throughout Oregon.

BACKGROUND

At their January 2012 meeting, the Board initiated a rule analysis of riparian protection standards on small and medium fish streams. The monitoring results leading to this analysis only identified an issue with the Protecting Cold Water (PCW) criterion as based on sample sites in the Coast Range and Interior Geographic Regions of Oregon. At their April 2012 meeting, the Board

adopted the following rule objective focused on this criterion (rather than on the complete set of goals for the water protection rules):

Establish riparian protection measures for small and medium fish-bearing streams that maintain and promote shade conditions that insure, to the maximum extent practicable, the achievement of the Protecting Cold Water criterion.

The Board also approved a plan for developing alternatives (April 2012), including non-regulatory approaches, for the rule analysis of riparian protection standards on small and medium fish streams. The plan included a decision timeline on findings (an “informal checklist”; Attachment 2) to be made at each step of the process to provide the Board clear information about the legal on-ramps, off-ramps and safety nets that define their decision space at each step.

At their July 2012 meeting, the Board approved a range of rule alternatives (13) to analyze in the rule analysis. At their November 2012 meeting, the Board directed the department to develop an approach to reviewing science related to the rule alternatives, as per ORS 527.714(5)(c). The Department, in consultation with stakeholders and technical experts, developed a protocol for a systematic review of this science. The Board approved this protocol in March 2013 and the findings in November 2013. In November 2013, the Board directed the Department to develop prescriptions for a new Riparian Protection Rule, considering: a) Variable retention buffers, b) No-cut buffers, and c) appropriate criteria for a Plan for Alternate Practice, with the overall goal of protecting sufficient shade to meet the Protecting Cold Water criterion and facilitating flexibility in harvest approaches. The Board also directed the Department to include Forest Practices Act and Forest Management Plan alternatives within the variable retention alternatives considered, and to develop prescriptions collaboratively with stakeholders.

The department updated the Board on progress at the April 2014 meeting, and discussed emerging policy issues and challenges. The Board directed the department to hold a workshop to assist their understanding of available information regarding their rule analysis process for protecting cold water, including relevant science, policy, and legal aspects, stakeholder perspectives and to provide an opportunity to discuss policy choices and potential outcomes. The department conducted the workshop in June 2014. At the September 2014 meeting, the Board received a summary of this workshop, and directed the department to proceed with the rule analysis, in conjunction with the Regional Forest Practice Committees and stakeholders.

ANALYSIS

Stakeholder input

Department staff met with the following groups of stakeholders:

- Combined NW/SW Regional Forest Practices Committees (Sept. 19)
- Committee for Family Forestlands (Sept. 10)
- Oregon Small Woodlands Association (Sept. 26)
- Oregon Stream Protection Coalition (Sept. 30)

The department sought input on the following points with each stakeholder group concerning various aspects of developing riparian prescriptions:

- The geographic extent of the rule analysis
- The extent of stream reaches included in the rule analysis
- What constitutes a complete and effective prescription for the follow prescription alternatives:
 - No-cut (no entry) buffer
 - Variable retention buffer
 - Shade-based plan for alternate practice

This first set of discussions aimed to find areas of agreement and disagreement on the geographic extent and stream extent for the rule application. We also sought to solidify the prescription alternatives for the Board, but not specify all details of prescriptions. Work will continue with these groups to finalize prescription details. In concert with this outreach, the department will analyze the range of shade and temperature outcomes that may be associated with the prescriptions at varying buffer widths and stand densities. The department will share analysis outcomes with Regional Forest Practice Committees and stakeholders to assist in refining prescriptions.

As we continue these conversations into the future, we will meet with stakeholders, the Regional Forest Practice Committees and ODF field personnel to field test the ease of implementing and administering each prescription.

Timeline

At the September 2014 meeting, the Board requested a timeline of work on the rule analysis. The Board clarified that high quality, deliberate development of prescriptions and associated analyses is more important than rushing to meet an early deadline. This timeline (Attachment 3) reflects the capacity for this work by updating that of the informal checklist, and including direction from the September 2014 meeting. The main points of the timeline are:

- 1) At the March 2015 meeting, the department will present analytical methods for:
 - RipStream predictive model for developing and analyzing prescriptions;
 - Preliminary economic and ecologic analyses;
 - Determining to which georegions and stream reaches prescriptions should apply.

In addition, the department will request the Board to decide to which georegions new prescriptions should apply.

- 2) At the April 2015 meeting, the department will bring results of predictive modeling for a range of prescriptions and associated economic and ecological information, and request the Board to select least burdensome prescriptions. In addition, the department will request the Board to decide if prescriptions should be voluntary, regulatory, or a combination thereof, and to which stream reaches prescriptions apply.
- 3) If the Board directs the department to develop rule language at the April 2015 meeting, this language will be brought to the Board in July 2015.

RECOMMENDATION

This item is informational only.

NEXT STEPS

The department will continue, in conjunction with the Regional Forest Practice Committees and stakeholders, to work on the riparian rule analysis per the Board's direction in September 2014, in preparation to bring preliminary prescription information to the Board in March and April 2015. We have set up meetings with stakeholders to continue this work.

ATTACHMENTS

- (1) Board direction from the September 2014 meeting
- (2) Rule Analysis Process for Riparian Protection Standards on Small and Medium Fish Streams
(Table 1: Informal Check List - Sequential approach to necessary findings for rule analysis and factors for adopting BMPs (ORS 527.714 and 527.765). Updated for November 2014 Board of Forestry meeting.
- (3) Adjusted Timeline for Riparian Rule Analysis